

FILED FEBRUARY 8, 2012

**STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES**

In the Matter of)	Case Nos.: 06-O-14476-RAH
)	(06-O-15520; 07-O-10309
ROSEMARY RODRIGUEZ,)	07-O-12931; 07-O-15004)
)	DECISION INCLUDING DISBARMENT
Member No. 64529,)	RECOMMENDATION AND ORDER OF
)	INVOLUNTARY INACTIVE
<u>A Member of the State Bar.</u>)	ENROLLMENT

Introduction¹

In this disciplinary matter, Michael J. Glass appeared for the Office of the Chief Trial Counsel of the State Bar of California (State Bar). Respondent Rosemary Rodriguez appeared intermittently in propria persona.

After considering the evidence and the law, the court recommends, among other things, that respondent be disbarred and be ordered to make restitution as set forth below.

Significant Procedural History

The Notice of Disciplinary Charges (NDC) was filed on September 11, 2009, and was properly served on respondent on that same date at her official membership records address, by certified mail, return receipt requested, as provided in Business and Professions Code section 6002.1, subdivision (c) (official address). Service was deemed complete as of the time of mailing. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1186.)

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

On September 22, 2009, respondent was properly served at her official address with a notice advising her, among other things, that a status conference would be held on October 13, 2009. This correspondence was returned as undeliverable by the United States Postal Service (USPS).

Respondent did not appear at the October 13, 2009, status conference. On October 22, 2009, she was properly served with a status conference order at her official address by first-class mail, postage prepaid. In the order, the court noted that respondent had not filed a response and that the court would entertain a motion for entry of default, due by November 3, 2009. This correspondence was returned as undeliverable by the USPS.

On November 17, 2009, the court granted the motion to abate this matter pending the Supreme Court's consideration of respondent's resignation with charges pending from the State Bar, tendered on November 4, 2009, in case no. 09-Q-17370. This correspondence was returned as undeliverable by the USPS.

On July 27, 2011, the Supreme Court declined to accept respondent's resignation.

On August 5, 2011, respondent was properly served at her official address with a notice advising her that a status conference would be held on August 31, 2011.

Respondent participated at the August 31, 2011, status conference during which she was ordered to file a response to the NDC by September 9, 2011 and trial and other dates were scheduled. An order memorializing this status conference was properly filed and served on respondent on September 6, 2011. The abatement was terminated effective August 31, 2011.

Respondent did not file a responsive pleading to the NDC. On October 31, 2011, a motion for entry of default was filed and properly served on respondent at her official address by certified mail, return receipt requested. The motion advised her that her disbarment would be sought if she was found culpable. Respondent did not respond to the motion.

On November 17, 2011, the court entered respondent's default and enrolled her inactive effective three days after service of the order. The order was filed and properly served on her at her official address on that same date by certified mail, return receipt requested. The return receipt shows delivery of this correspondence on November 18, 2011 to "Robert Eygenhuysen."

The State Bar's and the court's efforts to contact respondent after August 31, 2011, were fruitless. The court concludes that respondent was given sufficient notice of the pendency of this proceeding, including notice by certified mail and by regular mail, to satisfy the requirements of due process. (*Jones v. Flowers, et al.* (2006) 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415.)

The matter was submitted for decision without hearing after the State Bar filed a brief on December 7, 2011.

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in California on June 30, 1975 and has been a member of the State Bar of California at all times since that date.

The court's findings are based on the allegations contained in the NDC as they are deemed admitted and no further proof is required to establish the truth of those allegations. (§6088; Rules of Proc. of State Bar², rules 5.80(A)(3) and 5.81(B).) The findings are also based on any evidence admitted.

It is the prosecution's burden to establish culpability of the charges by clear and convincing evidence. (*In the Matter of Glasser* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 163, 171.)

²All references to Rules of Procedure refer to the Rules of Procedure in effect prior to January 1, 2011, unless otherwise stated.

Case No. 06-O-14476 - The Okin Matter

Facts

In July 2005, Michael Okin paid respondent an advanced fee of \$2,500 to represent him in employment discrimination claims against the USPS, including those pending with the Equal Employment Opportunity Commission (EEOC).

In May 2006, the USPS' attorney sent and respondent received a request to take Okin's deposition. She did not respond to the USPS' request or produce Okin for a deposition.

On May 30, 2006, an EEOC judge issued an order that Okin provide responses to written interrogatories to EEOC by June 23, 2006, or he would be subject to sanctions pursuant to 29 C.F.R. §1614.109(f)(3). Respondent received a copy of the order but did not submit Okin's interrogatory responses as ordered.

On June 30, 2006, an EEOC judge issued an order to show cause why Okin's claims should not be dismissed for not responding to the written interrogatories as ordered. The response to the order was due on or before July 17, 2006. Respondent received a copy of the order but did not file a response.

On June 30, 2006, an EEOC judge also issued an order that the parties be available for a pre-hearing telephone conference on July 11, 2006, or they would be subject to sanctions pursuant to 29 C.F.R. §1614.109(0)(3). Respondent received a copy of the order but did not appear for the conference. She, therefore, did not represent Okin at the conference.

On July 11, 2006, the USPS submitted a motion to dismiss Okin's claims for not responding to its request to take Okin's deposition or to the EEOC's requests for information; and for not appearing at the July 11, 2006 conference. Respondent received a copy of the motion.

On July 12, 2006, an EEOC judge ordered that a response to the USPS' motion be filed by July 21, 2006. Respondent received a copy of the order.

On that same date, respondent faxed a settlement proposal to the USPS' attorney, which was rejected on July 18, 2006.

On July 19, 2006, the USPS submitted a motion to dismiss Okin's claims for not complying with the May 30 and June 30, 2006 orders regarding interrogatory responses. Respondent received a copy of the motion.

On July 21, 2006, EEOC received respondent's response to the July 12, 2006 order, with a copy of Okin's response to the interrogatories, purportedly served on EEOC and the USPS' attorney by respondent on June 24, 2006. The documents had not previously been received by EEOC or the USPS' attorney.

On July 24, 2006, EEOC issued a decision and judgment regarding Okin's claims, finding that the responses to the interrogatories were untimely; and that the response to the July 12, 2006 order failed to state why there was no response to the June 30, 2006 order to show cause or why there was no appearance on behalf of Okin for the July 11, 2006 conference as ordered. As such, EEOC found no good cause as to why Okin's response to the May 30, 2006 order was untimely and why Okin ignored both of the June 30, 2006 orders, and withdrew Okin's request for a hearing. EEOC dismissed Okin's claims.

Respondent did not earn any portion of the \$2,500 advance fee Okin paid her.

On about February 4, 2007, Okin mailed a written request for a full refund of the \$2,500 advance fee. Respondent did not refund any portion of the \$2,500 advance fee.

On September 25, 2006, the State Bar opened an investigation in case number 06-0-14476 concerning Okin's complaint about respondent's representation. On November 2, and December 12, 2006, a State Bar investigator sent respondent letters at her official address

seeking a written response to allegations raised by Okin's complaint by November 17 and December 22, 2006, respectively. Each letter was mailed in a sealed envelope by first-class mail, postage prepaid, and deposited for collection by the USPS in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received them.

By letter dated November 9, 2006, respondent requested an extension to December 8, 2006 to respond to the allegations raised by Okin's complaint. She did not respond to the allegations by December 8, 2006.

On April 11, 2007, a State Bar investigator sent respondent a letter at her official address and at two alternate addresses in San Diego and El Cajon, California, seeking a written response to the allegations raised by Okin's complaint by April 26, 2007. Each letter was mailed in a sealed envelope by first-class mail, postage prepaid, and deposited for collection by the USPS in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received the letters but did not respond to them.

Conclusions

Count 1 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

Rule 3-110(A) provides that an attorney must not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

By not responding to the USPS' request to take Okin's deposition; by not submitting Okin's interrogatory responses by June 23, 2006; and by not complying with EEOC's June 30, 2006 orders, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A).

Count 2 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

By not refunding any portion of the \$2,500 unearned advance fee when her employment was terminated, respondent wilfully violated rule 3-700(D)(2).

Count 3 - (§6068, subd. (i) [Failure to Cooperate])

Section 6068, subdivision (i), provides that an attorney has a duty to cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against the attorney.

By not responding to the State Bar investigator's letters about Okin's complaint, respondent wilfully failed to cooperate and participate in her disciplinary investigation in violation of section 6068, subdivision (i).

Case No. 06-O-15520 - The Bell Matter

Facts

In February 2006, Kevin Bell employed respondent to represent him in workers' compensation and Equal Employment Opportunity claims against his employer, the Department of Homeland Security.

Between February and June 2006, Bell paid respondent \$6,787.50 as advance fees for the representation.

On June 19, 2006, respondent filed an employment discrimination lawsuit on Bell's behalf in the United States District Court. (*Kevin R. Bell v. Michael Chertoff, et al.*, case number CV0603845.)

On June 22, 2006, the court issued an order that the complaint be served and all proofs of service of the complaint be filed with the court by October 17, 2006.

On August 15, 2006, Bell sent and respondent received an email inquiring about the status of the defendants' answer to the complaint.

Respondent did not serve the summons and complaint on the defendants by October 17, 2006.

On October 31, 2006, the court issued an order to show cause why the action should not be dismissed for failure to prosecute (OSC) and set a hearing for November 7, 2006. Respondent received notice of it.

In October and November 2006, Bell made several requests to respondent for copies of documents filed in the action.

In a November 1, 2006, email to Bell, respondent misrepresented that she had sent him a file-stamped copy of the summons, complaint and answer, but, in reality, no answer to the complaint had been received or filed in the action.

On November 3, 2006, Bell also received a purported unconformed copy of an answer to the complaint by defendant Michael Chertoff from respondent. The answer reflected that attorney Alexis D. James had signed the answer as the attorney for Chertoff on September 10, 2006. Respondent, however, had not served Chertoff with the complaint, and an answer had not been filed or served. Respondent fabricated the answer to conceal the status of the case from Bell and her prior misrepresentation to him. James did not represent Chertoff in the action and had not signed the answer. Respondent forged James' signature on the answer.

In November 2006, Bell discovered the OSC upon reviewing the case summary for the action on a computer. On November 5, 2006, Bell sent respondent an email seeking an explanation about the OSC and why she had not informed him about it.

On November 7, 2006, respondent sent Bell an email representing that she had problems with her attorney service and that the proof of service for the complaint was not filed with the court.

On that same date, respondent filed a proof of service of the summons and complaint with the court indicating service on Chertoff on November 6, 2006.

On November 16, 2006, the court dismissed the action for lack of prosecution as the service of the complaint was untimely.

On December 12, 2006, the State Bar opened an investigation identified as case number 06-0-15520 concerning Bell's complaint regarding respondent's representation. On January 19 and March 1, 2007, a State Bar investigator sent respondent letters at her official address seeking a written response to allegations raised by Bell's complaint by February 5 and March 16, 2007, respectively. Each letter was mailed in a sealed envelope by first-class mail, postage prepaid, and deposited for collection by the USPS in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received them.

On April 11, 2007, a State Bar investigator sent respondent a letter at her official address and at two alternate addresses in San Diego and El Cajon, California, seeking a written response to the allegations raised by Bell's complaint by April 26, 2007. Each letter was mailed in a sealed envelope by first-class mail, postage prepaid, and deposited for collection by the USPS in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received the letters but did not respond to them.

Conclusions

Count 4 - (§6106 [Moral Turpitude])

Section 6106 provides, in part, that the commission of any act involving dishonesty, moral turpitude, or corruption constitutes cause for suspension or disbarment.

By misrepresenting to Bell that an answer had been received; by concealing the status of the action from Bell; and by fabricating the answer, respondent wilfully committed acts involving moral turpitude, dishonesty or corruption in violation of section 6106.

Count 5 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By not timely serving the defendants in the action, respondent intentionally, recklessly, or repeatedly failed to perform legal services with competence.

Count 6 - (§6068, subd. (i) [Failure to Cooperate])

By not responding to the State Bar investigator's letters about Bell's complaint, respondent wilfully failed to cooperate and participate in her disciplinary investigation in violation of section 6068, subdivision (i).

Case No. 07-O-10309 – The St. Lawrence Matter

Facts

On November 4, 2006, Ronald and Elaine St. Lawrence (collectively, St. Lawrence) employed respondent to handle a Chapter 7 bankruptcy and paid her a total of \$1,865, \$1525 in advanced fees and \$339 for costs. She deposited the \$1,865 check into her law office account at Bank of America which was not a trust account.

On November 20, 2006, St. Lawrence left respondent a telephone message informing her that they decided not to pursue the bankruptcy. The next day, respondent informed Elaine that she would send a refund check and their original papers as requested within seven to 10 days.

In December 2006 and January 2007, St. Lawrence left several messages for respondent regarding the refund and papers not yet received by them. Moreover, on December 8, 2006, Elaine sent respondent a letter by fax and certified mail regarding the refund check and the papers. Respondent received the letter but did not respond to the messages or letter.

Respondent did not earn or refund the \$1,526 in advanced fees or the \$339 in costs nor did she return the St. Lawrence's papers.

On January 10, 2007, the State Bar opened an investigation identified as case number 07-O-10309 concerning St. Lawrence's complaint regarding respondent's representation. On February 15 and March 9, 2007, a State Bar investigator sent respondent letters at her official address seeking a written response to allegations raised by St. Lawrence's complaint by March 2 and 23, 2007, respectively. Each letter was mailed in a sealed envelope by first-class mail, postage prepaid, and deposited for collection by the USPS in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received them.

On April 11, 2007, a State Bar investigator sent respondent a letter at her official address and at two alternate addresses in San Diego and El Cajon, California, seeking a written response to the allegations raised by St. Lawrence's complaint by April 26, 2007. Each letter was mailed in a sealed envelope by first-class mail, postage prepaid, and deposited for collection by the USPS in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received the letters but did not respond to them.

Conclusions

Count 7 - (Rule 4-100(A) [Failure to Maintain Client Funds in Trust Account])

Rule 4-100(A) provides that all funds received or held for the benefit of clients must be deposited in a client trust account and no funds belonging to the attorney or law firm must be deposited therein or otherwise commingled therewith, except for limited exceptions.

By depositing the \$1,865 check into an account not designated as a trust account, respondent wilfully violated rule 4-100(A).

Count 8 - (Rule 3-700(D)(2) [Failure to Return Unearned Fees])

Rule 3-700(D)(2) requires an attorney, upon termination of employment, to promptly refund any part of a fee paid in advance that has not been earned.

By not refunding \$1,526 in unearned fees to St. Lawrence after her services were terminated, respondent wilfully violated rule 3-700(D)(2).

Count 9 - (Rule 3-700(D)(1) [Failure to Return Client Papers/Property])

Rule 3-700(D)(1) requires an attorney, upon termination of employment, to promptly release to the client, at the client's request, all client papers and property, subject to any protective order or non-disclosure agreement. This includes pleadings, correspondence, exhibits, deposition transcripts, physical evidence, expert's reports and other items reasonably necessary to the client's representation, whether the client has paid for them or not.

By not returning the papers to St. Lawrence as requested after her services were terminated, respondent wilfully violated rule 3-700(D)(1).

Count 10 - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])

Rule 4-100(B)(4) requires an attorney to promptly pay or deliver, as requested by the client, any funds, securities, or other properties in the attorney's possession which the client is entitled to receive.

By not returning the \$339 in advanced costs to St. Lawrence as requested after her services were terminated, respondent wilfully violated rule 4-100(B)(4).

Count 11 - (§6106 [Moral Turpitude])

There is not clear and convincing evidence that respondent wilfully violated section 6106 by misappropriating the \$339 in advanced costs. Accordingly, this count is dismissed with prejudice.

Count 12 - (§6068, subd. (i) [Failure to Cooperate])

By not responding to the State Bar investigator's letters about St. Lawrence's complaint, respondent wilfully failed to cooperate and participate in her disciplinary investigation in violation of section 6068, subdivision (i).

Case No. 07-O-12931 – The Galley-Gokdemir Matter

Facts

In February 2006, Natalie Galley-Gokdemir and her husband, Murat Gokdemir, employed respondent to represent them in a joint petition for dissolution of marriage. Respondent did not disclose to Natalie the relevant circumstances and reasonably foreseeable adverse consequences to her in representing both parties, and did not obtain her informed written consent to the dual representation.

As part of the representation, respondent agreed to file a petition for dissolution in August 2006.

On February 24, 2006, Murat and Natalie advanced \$320 to respondent for the filing fee for the petition for dissolution. Respondent's fee for the representation was covered by Natalie's legal insurance with ARAG.

Between late July 2006 and August 4, 2006, Natalie sent email to and left telephone messages for respondent asking her to file the petition.

On August 11, 2006, Natalie left a telephone message for respondent asking her to file the petition before August 31, 2006 because her legal insurance was about to expire.

On October 26, 2006, respondent sent Natalie email indicating that she was getting ready to file the petition and not to worry about her attorney fees as they were taken care of.

In February 2007, Natalie sent respondent email and left her telephone messages asking about the status of the petition. Respondent told Natalie that she had finalized it and would file it

right away and send her a copy. She, however, did not send Natalie a copy of the petition.

In April 2007, Natalie sent respondent email asking about the status of the petition. In an April 16, 2007 email, respondent misrepresented to Natalie that she had submitted the petition to the court when, in reality, she had not done so. The next day, Natalie requested by email a copy of the petition. Respondent replied that she would send her a copy but did not do so since she had not filed it.

On April 26, 2007, Natalie sent respondent email stating that she had not received the copy of the petition and asking if respondent had mailed it. In her reply on that same date, respondent falsely represented to Natalie that she had mailed her a copy on April 20, 2007, but that she would mail another copy to her that same day. She did not do so because it had not been filed.

On May 9, 2007, Natalie sent respondent email requesting a copy of the petition and its status. She did not answer it.

On June 4, 2007, Natalie mailed respondent a letter requesting a refund of the \$320 in advanced costs. Respondent received it. She did not return any of the funds to Murat or Natalie.

On July 24, 2007, the State Bar opened an investigation identified as case number 07-O-12931 concerning Natalie's complaint regarding respondent's representation. On August 23 and September 12, 2007, a State Bar investigator sent respondent letters at her official address and an alternate address seeking a written response to allegations raised by Natalie's complaint by September 7 and 27, 2007, respectively. Each letter was mailed in a sealed envelope by first-class mail, postage prepaid, and deposited for collection by the USPS in the ordinary course of business. The letters were not returned to the State Bar as undeliverable or for any other reason. Respondent received them but did not respond to them. She did not respond the allegations raised by Natalie's complaint.

Conclusions

Count 13 - (Rule 3-310(C)(1) [Avoiding Representation of Adverse Interests, Written Consent])

Rule 3-310(C)(1) provides that an attorney must not, without the informed written consent of each client, accept representation of more than one client in a matter in which the clients' interests potentially conflict.

By not obtaining Natalie's informed written consent to the dual representation, respondent wilfully accepted representation of more than one client in a matter in which the interests of the clients potentially conflicted without the informed written consent of each client.

Count 14 - (§6068, subd. (m) [Failure to Communicate])

Section 6068, subdivision (m), provides that an attorney has a duty to promptly respond to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

By not responding to Natalie's May 9, 2007 email, respondent wilfully failed to respond promptly to the reasonable status inquiry of a client.

Count 15 - (§6106 [Moral Turpitude])

By misrepresenting to Natalie that she had submitted the petition for dissolution to the court and had mailed a copy of it to her, respondent wilfully committed acts involving moral turpitude, dishonesty or corruption.

Count 16 - (Rule 3-110(A) [Failure to Perform Legal Services with Competence])

By not filing the petition for dissolution with the court, respondent intentionally, recklessly or repeatedly failed to perform legal services with competence.

Count 17 - (Rule 4-100(B)(4) [Promptly Pay/Deliver Client Funds])

By not returning the \$320 in advance costs to Murat or Natalie, respondent wilfully failed to pay promptly, as requested by a client, any funds in respondent's possession which the client was entitled to receive.

Count 18 - (§6106 [Moral Turpitude])

There is not clear and convincing evidence that respondent wilfully violated section 6106 by misappropriating the advanced costs. Accordingly, this count is dismissed with prejudice.

Count 19 - (§6068, subd. (i) [Failure to Cooperate])

By not responding to the State Bar investigator's letters about Natalie's complaint, respondent wilfully failed to cooperate and participate in her disciplinary investigation in violation of section 6068, subdivision (i).

Case No. 07-O-15004 – The Probation Violations Matter

Facts

In June 2006, the State Bar Court filed an order approving the stipulation of the parties recommending discipline consisting of six months' stayed suspension and one years' probation on conditions. (State Bar Court case nos. 05-0-01879; 05-0-04256; 05-0-05024.) On its own motion, the court judicially notices its records which indicate that a copy of the stipulation and the State Bar Court's order approving same were properly served upon respondent's counsel. (Evidence Code §452, subd. (d).)

On October 18, 2006, the California Supreme Court filed order S145905, accepting the State Bar Court's discipline recommendation and ordering respondent to comply with the conditions of probation recommended, including the following, with which respondent did not comply:

1. Within 30 days of the effective date of discipline, contacting the Office of Probation to schedule a meeting to discuss the terms and conditions of probation. Respondent did not do so.

2. During the period of probation, submitting a written report to the Office of Probation on January 10, April 10, July 10 and October 10 of each year or part thereof during which the probation is in effect stating under penalty of perjury that he has complied with all provisions of the State Bar Act and Rules of Professional Conduct during said period (quarterly report).

Respondent has not submitted the quarterly reports due on the 10th of January, April, June and October 2007 and the final report due in November 2007;

3. Complying with certain mental health conditions:

a. Obtain a mental health evaluation from a California licensed mental health professional, or other medical provider approved by the Office of Probation who was qualified to perform such evaluation, within 30 days of the effective date of discipline;

b. Comply with all treatment recommendations of her treating mental health provider, including without limitation, recommendations regarding frequency of consultations and complying with a medication regime during the entire period of her probation;

c. Notify the Office of Probation of her treatment plan, and any subsequent modifications, within 10 days of any treatment plan or change in the plan;

d. Arrange for a written copy of the treatment plan, and any subsequent modifications, to be delivered to the Office of Probation within 10 days of any treatment plan or change in the plan; and

e. Include in any written reports to the Office of Probation her compliance or non-compliance with her mental health treatment conditions.

Respondent did not report her compliance with the mental health conditions to the Office of Probation at any time during the period of her probation.

4. Submitting to the Office of Probation satisfactory evidence of completion of no less than six hours of Minimum Continuing Legal Education (MCLE) approved courses in law office management, attorney-client relations and /or general legal ethics within 11 months of the effective date of discipline. She did not do so.

5. Providing to the Office of Probation satisfactory proof of her attendance at a session of State Bar Ethics School, and passage of the test given at the end of that session within one year of the effective date of discipline. She did not do so.

The Supreme Court order became effective on November 17, 2006, thirty days after it was entered. (Rule 9.18(a), California Rules of Court.) It was properly served on respondent.³

Respondent did not comply with the conditions of probation as set forth above.

Conclusions

Count 20 - (§6068, subd. (k) [Failure to Comply with Probation Conditions])

Section 6068, subdivision (k), provides that an attorney has a duty to comply with all conditions attached to any disciplinary probation.

By not complying with the foregoing probation conditions, respondent wilfully failed to comply with all conditions attached to her disciplinary probation.

³Although no proof was offered that the Clerk of the Supreme Court served the Supreme Court's order upon respondent, rule 8.532(a) of the California Rules of Court requires clerks of reviewing courts to immediately transmit a copy of all decisions of those courts to the parties upon filing. Moreover, it is presumed pursuant to Evidence Code section 664 that official duties have been regularly performed. (*In Re Linda D.* (1970) 3 Cal.App.3d 567, 571.) Therefore, in the absence of evidence to the contrary, this court finds that the Clerk of the Supreme Court performed his or her duty and transmitted a copy of the Supreme Court's order to respondent immediately after its filing.

Aggravation⁴

It is the prosecution's burden to establish aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b).)

Prior Record of Discipline (Std. 1.2(b)(i).)

The nature and extent of a prior disciplinary record is an aggravating factor. (Std. 1.2(b)(i).) As previously noted, on October 18, 2006, the California Supreme Court filed order S145905 imposing discipline consisting of six months' stayed suspension and one years' probation on conditions. She was found culpable of violating sections 6068, subdivision (a) and 6125/6126 (two counts) and 6106 (one count). There were no aggravating factors. Mitigating circumstances included no prior discipline, candor and cooperation; emotional or physical difficulties; family problems; severe financial stress; and good character references.

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent's misconduct evidences multiple acts of wrongdoing. (Standard 1.2(b)(ii).)

Harm to Client/Public/Administration of Justice (Std. 1.2(b)(iv).)

Respondent's misconduct significantly harmed a client, the public or the administration of justice. (Standard 1.2(b)(iv).) Okin's case was dismissed and the EEOC had repeated proceedings due to respondent's nonperformance. Bell's case was also dismissed. St. Lawrence had to make repeated, unsuccessful attempts to contact respondent to obtain the fees, costs and documents given to respondent.

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Lack of Candor/Cooperation to Victims/State Bar (Std. 1.2(b)(vi).)

Respondent's failure to participate in these proceedings prior to the entry of default is also an aggravating factor. (Std. 1.2(b)(vi).) However, it warrants little weight in aggravation because this conduct closely parallels that used to find respondent culpable of violating section 6068, subdivision (i) and to enter her default. (*In the Matter of Bailey* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 220, 225.)

Mitigation

Respondent bears the burden of establishing mitigation by clear and convincing evidence. (Std. 1.2(e).) Since respondent did not participate in these proceedings, the court has been provided no basis for finding mitigating factors.

Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline. If two or more acts of professional misconduct are found in a single disciplinary proceeding, the sanction imposed shall be the most severe of the applicable sanctions. (Std. 1.6(a).) The standards, however, do not require a prior record of discipline as a prerequisite for imposing any appropriate sanction, including disbarment. (Std. 1.7(c).)

Standards 2.2(b), 2.3, 2.4(b), 2.6(a) and 2.10 apply in this matter. The most severe sanction is suggested by standard 2.2(b): at least three months' actual suspension regardless of

mitigating circumstances for commingling entrusted funds or property with personal property or committing another violation of rule 4-100, none of which result in the wilful misappropriation of entrusted funds or property.

The Supreme Court gives the standards “great weight” and will reject a recommendation consistent with the standards only where the court entertains “grave doubts” as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91, 92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Respondent has been found culpable of noncompliance with several probation and, in four client matters, of violating rules 3-110(A) (three counts), 3-310(C)(1) (one count), 3-700(D)(1) (one count) and (2) (two counts), 4-100(A) (one count) and (B)(4) (two counts) as well as sections 6106 (two counts) and 6068, subdivisions (i) (four counts) and (m) (one count).

The State Bar recommends disbarment. The court agrees.

Lesser discipline than disbarment is not warranted. The serious and unexplained nature of the misconduct, the lack of participation in these proceedings as well as the self-interest underlying respondent’s actions suggest that she is capable of future wrongdoing and raise concerns about her ability or willingness to comply with her ethical responsibilities to the public and to the State Bar. She does not seem interested in practicing law and treated her clients accordingly. Moreover, it is evident that the prior instance of discipline has not served to rehabilitate respondent or to deter her from further misconduct. She is not a good candidate for probation as evidenced by her repeated probation violations. Having considered the evidence, the standards and other relevant law, the court believes that disbarment is the only adequate means of protecting the public from further wrongdoing by respondent. Accordingly, the court

so recommends.

Recommendations

It is recommended that respondent Rosemary Rodriguez, State Bar Number 64529, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

It is further recommended that respondent must make restitution as follows:

1. To Michael Okin in the amount of \$2,500 plus 10 percent interest per year from July 1, 2005, (or reimburse the Client Security Fund, to the extent of any payment from the fund to Michael Okin, in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles;

2. To Ronald and Elaine St. Lawrence in the amount of \$1,865 plus 10 percent interest per year from November 4, 2006, (or reimburse the Client Security Fund, to the extent of any payment from the fund to Ronald and Elaine St. Lawrence in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles; and

3. To Murat Gokdemir and Natalie Galley-Gokdemir in the amount of \$320 plus 10 percent interest per year from February 24, 2006, (or reimburse the Client Security Fund, to the extent of any payment from the fund to Murat Gokdemir and Natalie Galley-Gokdemir in accordance with Business and Professions Code section 6140.5) and furnishes proof to the State Bar's Office of Probation in Los Angeles.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, and to perform the acts specified in subdivisions (a)

and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding. Failure to do so may result in disbarment or suspension.

Costs

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Order of Involuntary Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: March ____, 2012

RICHARD A. HONN
Judge of the State Bar Court